

Mercy John Vs. Thankam

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Court : Kerala

Decided On : May-22-2003

Reported in : 2003(2)KLT798

Judge : R. Rajendra Babu, J.

Acts : [Kerala Panchayat Raj Act, 1994](#) - Sections 30(1), 34(1) and 34(2); Kerala Panchayats Subordinate Service Special Rules, 1994

Appeal No. : M.F.A. No. 866 of 2002

Appellant : Mercy John

Respondent : Thankam

Advocate for Def. : P. Vijaya Bhanu, Adv.

Advocate for Pet/Ap. : Dinesh Mathew J. Muricken, Adv.

Disposition : Appeal dismissed

Judgement :

R. Rajendra Babu, J.

1. The important question for consideration was whether a teacher of an aided school managed by the Panchayat was disqualified under Section 30(1) of the Kerala Panchayat Raj Act from contesting the election for being chosen to fill a

seat in the Panchayat.

2. The short facts are as follows: The 1st respondent Thankam was working as a teacher of Alagappanagar Panchayat High School and she filed the nomination for contesting the election to the Thrissur District Panchayat held on 25.9.2000 from Kodakara Constituency and she was declared elected. The appellant and the 2nd respondent were also candidates who contested for the election. The appellant raised a contention that the 1st respondent, being a teacher of the school managed by the Panchayat, was disqualified from contesting the election in view of Section 30(1) of the Panchayat Raj Act. It was further contended that the 1st respondent was the Implementation Officer of the Education Department of People's Planning Scheme of Alagappanagar Panchayat and as such she was disqualified under Section 34(1)(g) of the Panchayat Raj Act also. The appellant raised the above objections at the time of scrutiny of nominations. But the above objections were rejected by the Returning Officer. Accordingly the appellant filed O.P. (Election) No. 199/2000 before the District Court, Thrissur, for setting aside the election alleging that the 1st respondent was disqualified under Section 30(1) and 34(1)(g) of the Panchayat Raj Act (the Act, for short). The 1st respondent in the counter admitted that she was a teacher of Alagappanagar Panchayat High School. She contended that during 2000-01 no project of the People's Planning Scheme had been entrusted with her and she had no liability to the Panchayat. The District Judge, after considering the evidence, held that the 1st respondent had not incurred the disqualification either under Section 30(1) or under Section 34(1)(g) of the Act and accordingly the election petition was dismissed. Aggrieved by the above order, the petitioner has come up in appeal.

3. The main argument advanced by the learned counsel for the appellant was that the 1st respondent who was working as a teacher in the Alagappanagar Panchayat High School managed by the Panchayat was disqualified to contest the election in view of Section 30(1) of the Act. Section 30(1) reads:

'No officer or employee in the service of the State or Central Government or of a local authority or a Corporation controlled by the State or Central Government or of a local authority or any company in which the State or Central Government or a

local authority not less than fifty one percent share or of a Statutory Board or of any University in the State shall be qualified for election or for holding office as a member of a Panchayat at any level.'

In view of Section 30(1) no officer or employee in the service of the State or the Central Government or of a local authority or of a Corporation was qualified or entitled to contest the election as a candidate. Admittedly the 1st respondent was not an officer or an employee of the State service or in the service of the Central Government. It was argued by the learned counsel for the appellant that the 1st respondent was an employee of the local authority viz., the Panchayat and as such she was not entitled to contest the election and was disqualified to contest under Section 30(1) of the Act. Admittedly the Panchayat was running a school and the 1st respondent was a teacher working in the school. The learned counsel for the 1st respondent submitted that the teacher working in the school managed by the Panchayat was not an employee in the service of the Panchayat though the Panchayat was the educational agency running the school. The Panchayat was running the school in accordance with the Kerala Panchayats (Spread of Education) Rules, 1964; Rule 2 of the above Rules permit or authorise the Panchayat to establish and maintain schools for providing facilities for spreading education within the Panchayat area. Rule 2 reads:

'Panchayat may establish and maintain schools subject to the provisions of the Kerala Education Act-

(1) A Panchayat may, subject to the provisions of the Kerala Education Act, 1958 (6 of 1959) and the rules made thereunder , establish and maintain schools providing facilities for the spread of education within the Panchayat area.

(2) For the purposes of the Kerala Education Act, 1958 and the Rules made thereunder, such schools shall be considered as aided schools. The Panchayat shall be the educational agency, and the Executive Officer of the Panchayat shall be the Manager, in respect of such schools.

(3) Every appointment to a school established and maintained by a Panchayat shall be made by the Manager with the approval of the educational agency in

accordance with the provisions of the Kerala Education Act, 1958 and the rules made thereunder'.

The above rule would reveal that the Panchayat would be the educational agency for establishing and managing the school in accordance with the Education Act and the Rules. Section 3 of the Kerala Education Act deals with the establishment and recognition of schools. Sub-section (3) reads:

'The Government may, for the purpose of providing such facilities:-

(a) establish and maintain schools; or

(b) permit any person or body of persons to establish and maintain aided schools; or

(c) recognise any school established and maintained by any person or body of persons.'

Thus the Government can establish and maintain schools or permit any person or body of persons to establish and maintain aided schools or recognise any school established or maintained by any person or body of persons. The Alagappanagar Panchayat High School was established and maintained by the Panchayat and not by the Government. It was argued that the appointment to the Panchayat schools are made by PSC and hence the teachers are to be treated as employees of the State. For the sole reason that the selection for appointment to the schools was made by the PSC, the teachers could not be treated as employees in the service of the State. The appointments are made by the Panchayat from the select list prepared by the PSC. The schools established and maintained by the Panchayat come under category (b) of Sub-section (3) of Section 3 and are aided schools. An aided school is defined under Section 2(1) of the Education Act as:

' 'aided school' means a private school which is recognised by and is receiving aid from the Government, but shall not include educational institutions entitled to receive grants under Article 337 of the Constitution of India, except in so far as they are receiving aid in excess of the grants to which they are so entitled;'

A private school is defined under Section 2(7) as:

' 'private school' means an aided or recognised school;'

An educational agency also is defined under Section 2(2) as:

' 'educational agency' means any person or body of persons permitted to establish and maintain any private school under this Act;'

The Panchayat was the educational agency running the school and it was an aided school. The service conditions of the employees of the Panchayat are governed by the Special Rules for the Kerala Panchayats Subordinate Service, 1994 (SRO 868/94). The above Rules prescribe the constitution of the service of the employees of the Panchayat. The above Rules do not take in any teacher of the schools established and administered by the Panchayat though the above Rules take in all the categories of the employees of the Panchayat. As the teachers of the schools established and maintained by the Panchayat are not included in the above service rules, they cannot be treated as employees in the service of the Panchayat. The Panchayat was the educational agency running the aided school and the payment to the teachers were met by the State. In fact they are neither the officers or employees in the service of the State nor in the service of the Panchayat. They are in the same position as teachers of a private aided school and as such Section 30(1) of the Panchayat Raj Act does not apply to such teachers. Hence the argument advanced by the learned counsel for the appellant that the 1st respondent was an employee of the Panchayat cannot be accepted and as such the 1st respondent was not disqualified under Section 30(1) of the Act. The Court below had properly considered the matter and held that the 1st respondent was not disqualified under Section 30(1) of the Act and I find no reasons to interfere with the above finding.

4. Another contention put forward by the appellant was that the 1st respondent was the Implementation Officer of the Education Department of the People's Planning Scheme of Alagappanagar Panchayat. The 1st respondent contended that during the period 2000-01 she was not entrusted with any scheme under the People's Planning Programme. Even if she was working as an Implementation

Officer of the People's Planning Scheme of the Alagappanagar Grama Panchayat, she cannot be treated as a contractor or doing any work for the 'concerned Panchayat'. The above disqualification would apply for contesting to the concerned Panchayat only. Section 34(1)(g) of the Act reads:

'34. Disqualification of candidates.- (1) A person shall be disqualified for being chosen as and for being a member of a Panchayat at any level if he-

xx xx xx (g) is interested in a subsisting contract made with or any work being done for, the Government or the Panchayat concerned except as a shareholder (other than a Director) in a company or except as permitted by rules made under this Act;'

The 1st respondent was contesting from the Kodakara constituency to the District Panchayat and not to the Alagappanagar Grama Panchayat. The disqualification under Section 34(1)(g) might apply if the 1st respondent had any interest in any contract with the State or the District Panchayat or any work done for the State or the District Panchayat. Even if 1st respondent had any interest in the work done for Alagappanagar Panchayat, that was not a disqualification for contesting to the District Panchayat under Section 34(1)(g) of the Act. The Court below held that the above contention put forward by the appellant also cannot be accepted. I find no reasons to accept the above contention and the court below had properly considered the same and held that the disqualification under Section 34(1)(g) cannot be attracted.

5. The learned counsel for the 1st respondent submitted that the election petition before the designated court was not maintainable in view of Section 34(2) of the Act as the petition would disclose that the appellant had raised the same objections before the Returning Officer and those were rejected and thereafter she filed an appeal before the Election Commission. It was alleged in the petition that as the objections raised before the Returning Officer were rejected she filed an appeal before the State Election Commission and thereafter nothing was communicated to her regarding the same. When an appeal was filed, in the ordinary course, the above appeal should have been considered and disposed of, otherwise there was no chance for approaching the District Court by filing an

election petition. Placing reliance on the decision of Division Bench of this Court in *Sukumarakurup v. District Judge*, 1998 (2) KLT 548, the learned counsel for the 1st respondent submitted that the election petition itself was not maintainable as the order rejecting the appeal by the State Election Commission was 'final in view of Section 34(2) of the Act. In the decision cited supra the Division Bench held:

'The cardinal principle of law is that the law does not permit duplication or repetitive decisions on the same issue by different statutory authorities at different stages. Further probe is possible only in appeal, revision or other forms by higher authorities. The question of disqualification allegedly incurred under Section 34(1)(g) having been decided by the State Election Commission whose decision is final under Section 34(2), we are of the view that the same disqualification will not be subject to further probe in the election petition by the Court which is as much a creature of the statute as is the State Election Commission.'

In view of the above decision, the election petition, in fact, was not maintainable as the order rejecting the appeal filed before the Election Commission was final in view of Section 34(2) of the Act. Hence the Election Petition itself was not maintainable before the District Court. This appeal has only to be dismissed.

In the result this appeal is dismissed. The 1st respondent shall be entitled to the costs throughout.